STATE OF MAINE
KENNEBEC, SS.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO. KEN-15-534

STATE OF MAINE

Appellee

v.

CHRISTOPHER KNIGHT

Appellant

On Appeal from the Superior Court

REPLY BRIEF OF APPELLANT

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ARGUMENT

1. There was no evidence of any "damage to the environment" or need to "restore the environment"

The State entirely misses the point when it suggests that the removal of Knight's campsite from private property of a non-victim of his crimes was an "environmental clean-up expense" for "damage to the environment" under 17-A M.R.S §1322(3)(C-1). The State presented zero evidence at the hearing of any such environmental damage and did not even proceed under that portion of §1322(3)(C-1).

At the hearing the State specifically relied on the "restore the environment" portion of §1322(3)(C-1), Mot. Tr. at 9, and when specifically asked about whether the damage was really just from "someone living on the space for years" the State responded "Correct, yep. There was no intentional damage to the property. It was just that someone had been living there for a number of years." Mot. Tr. at 10.

This is a far cry from work done to "restore the environment." Absent any such evidence the State has no evidentiary basis to seek restitution for the State Police's expense in building a road to the campsite.

Indeed, the State acknowledged that the State Police's actions in removing Knight's campsite were really just part of their evidence collection because "I can't think of what wouldn't be evidence in this case, since the State's case was to prove that he was living there all the time. Everything would be evidence." Mot. Tr. at 8. There was no actual harm or damage so much as even mentioned by the State which noted that the State Police "took things out, both for investigative purposes, and it took things out that just shouldn't be there because it should have just been natural, left—so that it would be left as pristine as possible." Mot. Tr. at 8. There

simply was no evidence of any need for restoration, much less any suggestion that there was any "harm or damage." Restitution should not have been ordered.

2. The legislative intent of this specific restitution provision was entirely related to cleanup of drug operations.

17-A M.R.S. §1322 was originally passed in 1977 as the "Act to Encourage Restitution" and at that time the law did not contain any reference to "environmental clean-up expense." P.L. 1977, Ch. 45. The language concerning environmental clean-up was added in 1990 in an amendment to §1322 which was part of a broader omnibus drug bill focused entirely on the issue of drugs, specifically LSD. P.L. 1988, Ch. 924 ("An Act to Amend the Maine Criminal Code with Regard to Drugs"). Subsequent amendments did not change this language and the only changes to the statute that related to clean-up expenses involved further focused attention on the specific clean-up of drugs. P.L. 2015, Ch. 346 (another amendment in an omnibus drug bill providing the State with a vehicle to seek restitution when emergency personnel need to respond to clean up suspected methamphetamine laboratories).

The Legislature's clear purpose for including the language about "environmental clean-up" of chemicals, including those used in the manufacture of scheduled drugs, was to make sure that the State would be compensated for cleaning up dangerous drug laboratories, such as LSD or methamphetamine laboratories, in drug cases where the State would ordinarily be considered a "victim." Such laboratories and chemicals present clear and often imminent public dangers that the State is in a unique position to address lest there be danger to public safety. "The Act to Amend the Maine Criminal Code with Regard to Drugs" does not, however, express any legislative intent for the State to be compensated for clean-up of regular items, which in the case before the court were essentially evidence of non-drug criminal acts—burglaries and thefts—

where the State was not the named victim, and involved property that was not owned by the State.

3. All "clean-up expense" by police is not an "economic loss."

Accepting the State's argument, if the police cleaned up broken glass from a burglary then the expense associated with that "clean-up" would be considered "economic loss." Similarly, a police response to a theft that involved items that were dropped on private property would be considered a "clean-up" by the State.

It bears noting the obvious - the specific language in the restitution section involves "Environmental clean-up expense." Given the absence of any evidence that there was a need to "restore the environment to its previous condition prior to any harm or damage" then restitution cannot be ordered. The State presented no evidence other than that Knight lived at a campsite in the woods, on private property, and the police removed his campsite and seized everything as "evidence" of crimes that did not include as victims the owner of other property where Knight had his campsite or over which the State Police decided to build a road. This is a far and distant cry from any kind of an environmental clean-up expense.

WHEREFORE, for the foregoing reasons, Appellant respectfully requests this Court enter an order vacating the Superior Court's restitution order.

Date: April 8, 2015

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CERTIFICATE OF SERVICE

I, Walter F. McKee, Esq., hereby certify that two copies of the foregoing Appellant's Reply Brief have been mailed this date, postage prepaid, to:

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Dated: April 8, 2016

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